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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/518,957	06/27/2005	Jesus Ruben Abril	2997-46-PUS	2644

70960 7590 09/16/2008
SHERIDAN ROSS P.C.
1560 BROADWAY
SUITE 1200
DENVER, CO 80202

EXAMINER

PADEN, CAROLYN A

ART UNIT	PAPER NUMBER
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1794

MAIL DATE	DELIVERY MODE
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09/16/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/518,957

Applicant(s)

ABRIL ET AL.

Examiner

Carolyn A. Paden

Art Unit

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 July 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 91-157 is/are pending in the application.
- 4a) Of the above claim(s) 130-149 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 91-129, 150-157 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 8-14-07.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 91-129 and 150-157, drawn to an oil emulsion .

Group II, claim(s) 130-149, drawn to a method of making an emulsion.

The inventions listed as Groups I and II do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: The claims do not contribute over the prior art to Monte (US Patent 5,156,875) or May (6,140,374) or Terada (4,637,937) because they were cited as X references in the international search report.

This application contains claims directed to more than one species of the generic invention. These species are deemed to lack unity of invention

because they are not so linked as to form a single general inventive concept under PCT Rule 13.1.

The species are as follows:

A food product, a cosmetic product, a pharmaceutical product, a nutraceutical product and an industrial product as set forth in claims 122, 149, 157.

Applicant is required, in reply to this action, to elect a single species to which the claims shall be restricted if no generic claim is finally held to be allowable. The reply must also identify the claims readable on the elected species, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered non-responsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

The claims are deemed to correspond to the species listed above in the following manner:

The following claim(s) are generic:

Claims 122, 149 and 157.

The species listed above do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, the species lack the same or corresponding special technical features for the following reasons: The claims do not contribute over the prior art to Monte (US Patent 5,156,875) or May (6,140,374) or Terada (4,637,937) because they were cited as X references in the international search report.

In a telephone call to Darla Yoerg on about July 30, 2008, examiner called to correct the restriction requirement made on June 30, 2008 and include claims that are currently a part of this application. The restriction requirement is repeated above to show the claims that are active in the application. Examiner also requested a provisional election. Applicant elected product claims that are food products.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 91-95, 98,-120, 122-125, 150-157 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cain (2002/0081366).

Cain discloses triglycerides that are rich in polyunsaturated fatty acids. In example VII range style dressing is made with oil, egg yolk, water and xanthan gum. The oils are described as a combination of sunflower oil and an interesterified blend of tuna oil and another triglyceride. The fatty acid content of the part of the blend is shown on Table 20 to contain long chain fatty acids with at least three double bonds (see also paragraph 0014). The claims appear to differ from Cain in the recitation of an emulsion stabilizer but applicant defines xanthan gum as an emulsion stabilizer in claim 101. Lecithin and oil from egg yolk would be expected as the emulsifier in this example. It is appreciated that an antimicrobial agent is not mentioned but it is known in the art to include antimicrobial agents to extent the shelf life of a food. It is also appreciated that the particular weight ratios of oil to water and emulsion stabilizer are not mentioned but given the variety of foods prepared in Cain, it would have been obvious to modify the ratios of ingredients in Cain according to the particular emulsion desired. Fortification of foods with nutrients and flavors is a way to enhance the utility of foods. No unobvious or unexpected result is seen from the stability of the emulsion because it is well known in the art to prepare foods with an extended storage life.

Claims 96, 97 and 121 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cain as applied to claims 91-95, 98-120, 122-126 and 150-157 above, and further in view of Kohn (2005/0129739) or Kyle (5,658,767):

The claims also appear to differ from Cain in the selection of oils from genetically modified sources, lie microbial and plant sources. Although natural oil sources are used in Cain, oils from microorganisms and genetically modified plants are known in the art, as shown by Kohn and Kyle. It would have been obvious to one of ordinary skill in the art to utilize the oils of Kohn and Kyle in order to enhance the nutritive quality of the food.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone number is (571) 272-1403. The examiner can normally be reached on Monday to Friday from 7 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano, can be reached by dialing 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Carolyn Paden/

Primary Examiner 1794